

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.225 of 2021

Arising Out of PS. Case No.-57 Year-2020 Thana- KOTWALI District- Patna

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1. Rakesh Kumar S/O Sri Ramnath Singh R/O Flat No. 204, Sharan Complex Apartment, Sadaqat Ashram, P.S.-DIGHA, District-Patna.
 2. Pafull Kumar Jha S/O Gunakant Jha R/O Village-Ranipur Baistha, P.S.-Chanpura, District-Madhubani.
 3. Pavnesh Garg S/O Chetan Swaroop Garg R/O Mohalla-Gali No.4, Patel Nager, P.S-Patel Nagar, District-Gurgaon (haryana).

... .. Petitioners

Versus

1. The State Of Bihar through Additional Chief Secretary Cum Secretary, Home Department Govt. Of Bihar
2. The Senior Superintendent Of Police, Patna.
3. The Officer In-Charge, Kotwali P.S., Patna.
4. Kishore Kunal S/O Jai Shankar Prasad Jha R/O Budhmarg Road, P.S.-kotwali, District-Patna Working As Proprietor Of M/S Galaxy Communication, Samsung Service Center, P.S. Kotwali, District-Patna.

... .. Respondents

Appearance :

For the Petitioners	:	Mr.Rajesh Ranjan, Advocate
For the Respondents	:	Mr. Deepak Kumar, AC to GP 4

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

7 16-01-2024

Heard Mr. Rajesh Ranjan, learned counsel for the petitioners and Mr. Deepak Kumar, learned AC to GP-4 for the State. Respondent no. 4 was noticed but despite publication of notice in Hindi and English newspaper, namely, Hindustan and Hindustan Times published from Patna, respondent no. 4 has not entered appearance.

2. The petitioners in the present case have invoked the extraordinary writ jurisdiction of this Court under Article 226 of



the Constitution of India to quash and cancel the First Information Report registered as Kotwali P.S. Case No. 57 of 2020 for the offence alleged under Sections 341, 342, 323, 504, 506, 447, 448, 354 (A) and 34 of the Indian Penal Code (in short 'IPC'). The FIR, copy of which is enclosed as Annexure '1' to the writ application, has been lodged on 19.01.2020 by respondent no. 4 with respect to the alleged occurrence which took place on 16.12.2019.

Prosecution Story

3. It is the case of the informant-respondent no. 4 that on 16.12.2019, four employees of Samsung Company, namely Pavnesh Garg, Praful Kumar Jha and Rakesh Kumar and one more came to his office and entered into the cabin of female employee. It is alleged that those persons snatched the laptop of the said employee and shut down the same, on this the informant's employee asked those persons as to who are they and why are they doing this. It is alleged that on asking of the female employee of the informant, the accused said that he is the Auditor of the Samsung Company and he can do anything. After saying this Pavnesh Garg sat in the cabin and started taking out the articles kept in the cabin and the second person whose name is not known to the informant started throwing the articles and files whereupon the female employee asked them to stop but he indulged in



abusing and physically pulling hand of the female employee. At this stage, the informant alleges that the female employee informed him over telephone whereafter the informant reached there and tried to stop the objectionable conduct of the accused. The informant claimed that he was also abused and they indulged in assaulting him also. It is further alleged that in the meantime, the electricity went off for 4-5 minutes and taking benefit of this, they indulged in teasing the female employee, forcibly entered into the bathroom where she was and started pulling her by her hand. Pavnesh Garg, Praful Jha and Rakesh Kumar were involved in this. The informant claimed that he immediately informed it to the police but the accused persons fled away whereafter he informed this occurrence to the Senior Officers of the Samsung Company who requested the informant not to lodge the FIR in police and if he does such things then his service center would be closed. The informant requested the Officer-in-Charge of Kotwali Police Station, Patna to take legal action against the accused persons.

Stand of the Petitioners

4. Learned counsel for the petitioners submits that these petitioners are the employees of the Company who have been made accused in this case only with a mala fide intention to harass them and the management of the Samsung Company. In order to



strengthen their plea of mala fide prosecution, learned counsel for the petitioners has placed before this Court the following un-rebutted facts:-

(i) M/s. Samsung India Electronic Private Limited (hereinafter referred to as the 'Company') is a multi-national company operating in several cross-border jurisdictions and is engaged in the business of manufacture and sale of the consumer electronics including mobile phones and home appliances under the brand name of "Samsung".

(ii) The respondent no.4 approached the Company for running an authorised center of the Company at Patna. Having accepted the representation of respondent no.4, the Company entered into two separate agreement namely Authorised Service Center (ASC Agreement) and Spare Parts Agreement. Both the agreements were executed between the parties and the same was lastly renewed on 21 June, 2019.

5. A copy of the agreements have been brought on record from which it would appear that the respondent no.4 had signed the agreements as proprietor of M/s. Galaxy Communication. M/s. Galaxy Communication has been referred as service provider under the ASC Agreement and it talks of the representations made by the service provider that it has the



necessary expertise, acumen and infrastructure to provide services contemplated under the Agreement. The ASC Agreement contains inter-alia a termination clause wherein clause 14.1(a) provides that the agreement may be terminated by either party by giving thirty days in writing to other party without assigning any reason whatsoever. Clause 14.1(b) laid down the kind of events, happening of which may trigger an action for termination of the Agreement. Clause 14.3 talks of obligation on termination and 14.4 provides for claims upon termination. Clause 8 of the ASC Agreement provides the mechanism of dispute resolution between the parties arising out of or in connection with the agreement. This Clause talks of settlements amicably within a period of forty five days after written notification from one party to the other that a dispute or difference has arisen. In the event, amicable settlement is not reached within forty five business days, the difference or dispute shall be finally resolved by arbitration by a sole arbitrator to be mutually appointed by parties within thirty days, failing which to be referred to the Delhi International Arbitration Center (DIAC) or Indian Council of Arbitration (ICA) or any such other institute or organisation in that order, for such appointment. Arbitration shall be held at New Delhi and shall be conducted in English language in accordance with the rules provided under



Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of 1996').

6. Learned counsel for the petitioners submits that during the continuance of ASC Agreement, the respondent no. 4 was found involved in abnormal process deviation causing inconvenience to the customers which was resulting in tarnishing of company's goodwill in the market and this led to imposition of penalty amounting to Rs. 4,42,850/- by the Company from February 2017 to August 2019. The respondent No. 4 admitted his mistake and paid fine imposed by the Company. In December, 2019, the Company received a complaint from customer against the respondent no. 4's service center for issuance of fake invoice. Thereafter, the company in order to verify the genuineness of the complaint and for routine evaluation of the service center, informed respondent no. 4 for holding an audit.

7. It is stated that on 16.12.2019 an Audit Team of the Company comprising petitioner no. 2 visited service center of respondent no. 4 to conduct routine audit and verify the complaint. Petitioner no. 1 and 3 were not even present in the service center of respondent no. 4 during the course of action. The Company officials requested the employees of respondent no. 4 to allow them to conduct the audit and also sought their cooperation in the



audit process. At the instance of respondent no. 4, his employees obstructed the audit process and refused to cooperate by producing the relevant documents. The Audit Team, however, found two registers in the service center having details of the customers from whom cash amount was taken by the respondent no. 4 without issuing any genuine receipt for providing service in violation of terms and conditions of the Agreement. When the Audit Team requested to hand over the said registers for the audit purpose, the respondent no. 4 switched off the lights and hide the registers and employees of respondent no. 4 threatened the company's officials, they also snatched the laptops of the officials of the company forcefully.

8. It is stated that the Audit Team found the complaint of the customers regarding issuance of fake invoice by respondent no. 4 true, accordingly, a report was submitted. Thereafter, the company held a meeting with respondent no. 4 on 19.12.2019 and informed him about his poor performance. The respondent no. 4 assured the Company to resolve all the issues in a week i.e. 26.12.2019. A copy of the minutes of the meeting dated 19.12.2019 has been enclosed as Annexure '3' to the writ application. Respondent no. 4 was there in attendance in this meeting and signed the minutes.



9. It is stated that the Company terminated the Agreement with respondent no. 4 vide letter dated 02.01.2020. A copy of termination letter has been enclosed as Annexure '4' to the writ application. A reading of the termination letter would show that the Agreement had been terminated under clause 14.1(a) by giving 30 days notice for termination of Agreement.

10. It is the specific case of the petitioners that after communication of the termination agreement, the respondent no. 4 has lodged the present case by making false allegation and this has been done only to harass the management of the Company and the petitioners. The respondent no. 4 served a notice under Section 21 of the Act of 1996 but later on he abandoned the said notice and no arbitration proceeding has been held. Respondent no. 4 filed a Commercial Case bearing No. 414 of 2020 in the court of District Judge (Commercial Court), Patiala House, New Delhi under Section 9 of the Act of 1996 to stay the effect of termination letter dated 02.01.2020 and to issue a direction to the Company to unlock the SAP Code of the Service Center.

11. Learned counsel for the petitioners submits that from the narration of the facts placed before this Court it is crystal clear that the FIR has been lodged by respondent no. 4 after more than a month from the date of alleged occurrence only because the



Company had terminated the ASC Agreement. The criminal case has been instituted to put pressure on the Company to revive the terminated Agreement and this is nothing but an arm twisting of the Company.

12. Learned counsel relies upon the judgment of the Hon'ble Supreme Court in the case of **G. Sagar Suri v. State of U.P.**, reported in **(2000) 2 SCC 636** wherein it has been held that it is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence.

13. Learned counsel further relied upon a judgment of the Hon'ble Supreme Court in the case of **State of Haryana v. Bhajan Lal** reported in **1992 Supp (1) SCC 335** wherein it has been held that "where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge", the case would be covered under one of the illustrations.

14. It is submitted that in such circumstance the continuation of criminal proceeding would be nothing but an abuse of the process of the court. In course of hearing when learned counsel for the State submitted that in this case chargesheet has been filed vide Annexure 'A' to the counter affidavit of the State,



learned counsel for the petitioner took time to amend the writ application. Today this Court has been informed that no chargesheet is available on the record of the learned court below. Prayer has been made to consider quashing of the FIR as well as chargesheet copy of which has been enclosed as Annexure 'A' to the counter affidavit.

Stand of the State

15. Mr. Deepak Kumar, learned AC to GP 4 represented the State. It is submitted that the Police has found the case true and a chargesheet bearing no. 146 of 2021 has been filed. The copy of chargesheet has been enclosed as Annexure 'A' to the counter affidavit.

Consideration

16. Having heard learned counsel for the petitioner and State as also on perusal of the materials available on the record, this Court finds that in this case all efforts have been made by this Court to obtain appearance of respondent no. 4 but despite steps taken to serve respondent no. 4, the notice was not served. The office notes of the registry records that the process server mentioned that respondent no. 4 was contacted on phone but satisfactory response was not given. The fact is that the notice was not served to respondent no. 4 on the address given by him in the



first information report. Thereafter, the petitioners took steps for substituted service of notice. Notice was published in two Daily Newspapers published from Patna. Despite publication of notice respondent no. 4 has not appeared to oppose this application. As a result thereof the statements made by the petitioners taking a plea of mala fide and the various documents attached with the writ application have remained uncontroverted. The Investigating Officer has not investigated the case from all angles and it appears that in a routine and in a mechanical manner chargesheet has been prepared.

17. The petitioners have placed on record the copy of termination letter and thereafter the notice issued under Section 21 of the Act of 1996 by respondent no. 4. There is also no denial that respondent no. 4 has filed a commercial court case in the Patiala House Court at New Delhi.

18. To this Court, it appears that the statements made in the writ application and the document enclosed herewith have remained uncontroverted and be safely relied upon. In the case of **Rajiv Thapar & Other V. Madan Lal Kapoor** reported in (2013) 3 SCC 330, the Hon'ble Supreme Court has held that where the documents enclosed are uncontroverted, reliance may be placed on the same.



19. This Court is also of the view that the allegations made in the FIR against the petitioners who are the officials of the Company are highly improbable and there being a delay of over one month in making such allegations, the view of the Court gets further strengthen that in fact it is a case of mala fide prosecution of the petitioners. In the opinion of this Court, continuance of the proceeding arising out of the present FIR would be nothing but an abuse of the process of the court. The FIR and the subsequent proceeding, if any are required to be quashed in the interest of justice. Accordingly, this Court quashes the first information report of Kotwali P.S. Case No. 57 of 2020, chargesheet and further proceeding arising out of this FIR.

20. This writ application stands allowed.

(Rajeev Ranjan Prasad, J)

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